

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 28

JOHN WALTER OAKLEY, JR., PETITIONER

VS.

LOUISVILLE & NASHVILLE RAILROAD CO., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

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1 In District Court of The United States for the
Eastern District of Kentucky, at London

No. 363

JOHN WALTER OAKLEY, JR., CORBIN, WHITLEY COUNTY,
KENTUCKY, PLAINTIFF

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, DEFENDANT

Complaint

Filed April 14, 1947

Plaintiff, John Walter Oakley, Jr., alleges that:

1. This is a complaint under Section 8, Sub-Section (e), Selective Training and Service Act of 1940 (54 Stat. 890) 50 U. S. Code App., Section 308 (e), as amended (56 Stat. 724), and the jurisdiction of this Court is based on that section.

2. Plaintiff is a resident of the Eastern District of Kentucky, and resides at 923 Barbourville Street, Corbin, Whitley County, Kentucky.

3. Defendant is a corporation organized under the laws of the State of Kentucky, and doing business in the Eastern District of Kentucky, carrying on the business of railroading.

4. Beginning on or about July 1, 1938, until May 7, 1944, plaintiff was employed by the defendant, starting as apprentice at Louisville, Kentucky; being promoted to machinist in 1941 at Louisville; giving up his seniority rights in 1943 to be transferred to the Loyal Yard of the Louisville and Nashville Railway Company, as a locomotive machinist, where he was employed at the time he entered the Armed Forces of the United States.

2 5. Plaintiff was paid wages or salary for said employment by said defendant company at the time of his entry into the Armed Forces at the rate of \$1.06 per hour.

6. Plaintiff continued to work for and occupy said position in the employment of the defendant until May 7, 1944, at which time plaintiff was inducted into the Armed Forces of the United States, and thereupon entered the military training and service of said Armed Forces. Plaintiff was registered with the Selective Service Board of Registration, Local Board No. 58, Harlan, Kentucky, and his Order Number was 10036.

7. Plaintiff satisfactorily completed his training and service in the Armed Forces of the United States and was honorably discharged therefrom on May 22, 1946, and on June 1, 1946, within ninety days after his discharge applied to the defendant for re-

employment in the position and employment he occupied with the defendant at the time he was inducted into the Armed Forces, with the seniority and pay that he would have had had he continued in the employment, and had he not served in the Armed Forces of the United States for the time above set out.

8. After plaintiff had made application for reemployment on June 1, 1946, he was reemployed by the defendant on July 17, 1946, as locomotive machinist at the rate of pay of \$1.92 $\frac{1}{2}$ per hour, which was the same employment that he had at the time of his entering the Armed Forces, and the increase of \$0.16 $\frac{1}{2}$ per hour was the increase given to all locomotive machinists regardless of seniority; that upon his reemployment he was given seniority on the date of said reemployment of July 17, 1946, when he was entitled to seniority from July 1, 1945, had he been given the seniority that he would have had had he remained in the employment of the company during the period of his service in the Armed Forces.

9. Plaintiff states that during his service in the Armed Forces on July 1, 1945, the Loyal Shop of the Louisville & Nashville Railway Company was transferred to Corbin, Kentucky, and that had he not been in the Armed Forces he would have been transferred to the Corbin Shop with seniority from July 1, 1945, instead of July 17, 1946, when he was reemployed; that he is now having to work from 11:00 P. M. to 7:00 A. M., when with his seniority rights established he would be working from 7:00 A. M. to 3:00 P. M.; that there is also the possibility that he may be cut off entirely unless he has the advantage of the seniority to which he is entitled.

10. Plaintiff states that he is qualified to perform the duties of locomotive machinist, and also physically able to perform said duties, having been performing the duties of locomotive machinist since his reemployment with this company.

11. Plaintiff alleges that he is entitled to be restored to seniority from July 1, 1945, which seniority he would have had had he not served in the Armed Forces of the United States, and remained in the continuous employment of the defendant.

Wherefore, plaintiff respectfully prays:

(a) That this Court adjudge and decree that the plaintiff be given seniority from July 1, 1945, which seniority status he would have had in his employment with the defendant company had he not served with the Armed Forces for the period of time mentioned herein;

(b) That plaintiff have such other and further relief as may be just and proper in the premises, including costs.

(S) KIR C. ELSWICK,
Assistant United States Attorney.

The affiant, Kit C. Elswick, Assistant United States Attorney for the Eastern District of Kentucky, says that the statements contained in the foregoing Complaint are true, as he verily believes.

(S) KIT C. ELSWICK.

Subscribed and sworn to before me by Kit C. Elswick, this 14th day of April 1947.

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In United States District Court

Summons

Filed April 23, 1947

To the above named defendants: You are hereby summoned and required to serve upon Kit C. Elswick, Asst. U. S. Attorney, Plaintiff's attorney, whose address Lexington, Kentucky, an answer to the complaint which is herewith served upon you, within 2 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

(S) A. B. ROUSE, Clerk.

APRIL 14, 1947.

Return on summons

I hereby certify and return, that on the 14th day of April 1947, I received the within summons and on April 15, 1947, executed the same on the Louisville & Nashville Railway Company by serving a true copy of the within writ, with copy of petition attached, on J. M. Johnston freight agent of said railway company, at Lexington, Fayette Co., Ky.

J. M. MOORE,

United States Marshal.

By (S) R. A. GAYLE,

Deputy U. S. Marshal.

In United States District Court

Order

Filed April 29, 1947

This day came defendant by counsel, Charles S. Landrum, and offered for filing Request for Admission under Rule 36 and the Court being advised; it is Ordered that said Request for Admission under Rule 36 be and the same is hereby filed and noted of record.

(S) H. CHURCH FORD,

Judge, U. S. District Court.

Request for admission under rule 36

Filed April 29, 1947

Defendant, Louisville & Nashville Railroad Company, requests plaintiff to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

That each of the following statements is true:

1. Plaintiff, John W. Oakley, Jr., started working as a machinist at Loyall, Ky., on July 6th, 1943.
2. Glen B. Wolfe started working as a machinist at Loyall, Ky. on May 13th, 1929.
3. Robert S. Kallem started working as a machinist at Loyall, Ky. on October 4th, 1926.
4. Pearl M. Shell started working as a machinist at Loyall, Ky., August 19th, 1926.
5. Elijah J. Saylor started working as a machinist at Loyall, Ky. June 27th, 1926.
6. On July 1st, 1945, because there was not sufficient work at Loyall, Ky., Glen B. Wolfe, Robert Kallem and Pearl M. Shell were laid off.
7. Recently Elijah J. Saylor was granted a leave of absence on account of serious illness and from the date such leave of absence was granted to him Pearl M. Shell has been working as machinist at Loyall.
8. The machinist work of defendant at Loyall can be done and is well being done by Pearl M. Shell and machinists senior to Shell.
9. From July 1st, 1945, to date of illness of Elijah J. Saylor, the machinist work at Loyall was done by Saylor and machinists senior to Saylor.
10. On July 18th, 1946, Mr. H. Feather received the following letter from plaintiff, John W. Oakley, Jr., dated July 1st, 1946:
 "Inasmuch as I was laid off in force reduction at Loyall, Kentucky, as machinist on July 1, 1945, and was in the armed forces of the U. S. stationed in Germany at that time, kindly accept this as my application for a job as machinist at Corbin, in accordance with Rule 26 (b) of the agreement effective Sept. 1, 1943.

"Also accept this as my request for seniority dating of July 1, 1945, at Corbin, Kentucky, since if I had been working at Loyall and had not been in the Armed Forces, I would have accepted a position in Corbin at that time. This request is justified and is in accordance with the G. I. Bill of Rights and also

the agreement dealing with returning veterans between the L&N R. R. and System Federation No. 91."

11. H. Feather is Master Mechanic for defendant and as such is in charge of all mechanical forces at Corbin, Ky., Loyall, Ky., and several other points on defendant's railroad.

12. On July 18th, 1946, plaintiff started working for defendant as machinist at Corbin, Ky.

13. Plaintiff was, on July 18th, 1946, placed on seniority list as machinist at Corbin with seniority from that date.

14. On July 18th, 1946, Plaintiff was restored to his former position on the seniority list of machinists at Loyall, Ky.

15. Plaintiff's seniority as machinist at Loyall, Ky., dates from July 6th, 1943.

16. Since July 1st, 1945, because of changed circumstances, during the period plaintiff was in the Armed Forces there has been no work for plaintiff at Loyall, nor has there been work for some of the machinists senior to plaintiff at that point, and it has been impossible to employ plaintiff at that point and would be unreasonable for defendant to employ plaintiff at Loyall.

17. Had plaintiff not been in the Armed Forces, he would have been laid off at Loyall when the forces were reduced at that point on July 1st, 1945.

18. Plaintiff will be called back for work at Loyall in his turn according to his seniority standing at that point, if, and when, the conditions and circumstances change and there is work to be done at that point that calls for the services of those senior to plaintiff and plaintiff.

19. At Corbin he is assigned and will be assigned to work according to his seniority at Corbin, which said seniority dates from the date and time he started to work at that point, to wit July 18th, 1946.

20. Defendant employs 131 machinists at Corbin, Ky., and plaintiff stands No. 28 on the seniority list of machinists at Corbin.

21. The seniority of machinists at Corbin, Ky. of those starting to work as machinists at Corbin, Ky. between December 18th, 1944 and July 18th, 1946, are as follows:

No. 122	Chester C. Parrott	Dec. 18th, 1944
No. 123	Vernon C. Vandermark	Nov. 20th, 1945
No. 124	N. M. Jenkins	April 7th, 1946
No. 125	L. C. Whitus	June 5th, 1946
No. 126	L. S. Stansberry	June 17th, 1946
No. 127	G. G. Harp	June 20th, 1946

The seniority of each of said machinists dates from the time each of them started to work as machinists at Corbin, Ky.

22. The International Association of Machinists operating through System Federation No. 91, Railway Employees' Depart-

ment, American Federation of Labor is the duly authorized, designated, and recognized bargaining agent or representative of the machinists employed by defendant.

23. The agreement between defendant and its machinists represented by International Association of Machinists, dated September 1st, 1943, contains the following:

"Rule 26—Transfer of Laid-Off Employees

"26 (a) While forces are reduced, if men are needed at other points, furloughed men will be given preference to transfer, with privilege of returning to home station when force is increased, such transfer to be made without expense to the company, seniority to govern.

8 "26 (b) An employee laid off in force reduction desiring to secure employment under this rule shall notify his foreman in writing and furnish his craft General Chairman copy of the letter."

"Rule 28—Seniority

"28 (a) Seniority of each employe covered by this agreement will begin from the date and time the employe starts to work.

"28 (b) Seniority of employe in each craft covered by this agreement shall be confined to the point employed for those who perform work as per special rules of each craft in the various departments of the railroad as follows:

Machinists * * * "

24. On January 15th, 1943, defendant entered into the following memorandum of understanding with the machinists employed by it and represented by the International Association of Machinists:

"Memorandum of Understanding

"Protecting Seniority of Employees Entering Military or Naval Service

"Pursuant to Federal legislation (i. e., Public Resolution No. 96 of the 76th Congress, and the Selective Training and Service Act of 1940) any employee of this Company who has established a seniority date and who shall be ordered or inducted into the land or naval forces in accordance with such legislation, or has enlisted in the land or naval forces after the declaration of the existence of any emergency by the President of the United States on September 8, 1939, shall upon completion of such service in the land or naval forces, be restored to such position with this Company, (including rights to promotion) to which his accumulated seniority entitles him, all in accordance with the then existing rules of the schedule agreement, the same as if he had remained in

9 the service (such right to be exercised by the individual within five days from his reporting for duty), provided, upon completion of his service he receives from the Government a certificate as provided by the law, or other proper evidence of release, is still qualified to perform the duties of such position, makes application for return to service within forty days after he is released from such training and service, and provided this Company's circumstances have not been so changed as to make it impossible or unreasonable to return him to his former position or a position of like seniority, status and pay, provided, that in connection with voluntary enlistments in the regular land or naval forces, the above will apply only to the first period of such enlistments.

"The general purpose hereof is to provide that all such persons who return to the service of this Company in accordance with the provisions of the paragraph above, shall be considered as having been on leave of absence or furlough during their period of training and service, and shall be restored to service without loss of seniority.

"Such employee, while so engaged in military or naval service will be granted free transportation to the same extent as though they were engaged in the active service of this Company, except no passes will be issued for travel under military orders."

(S) C. S. LANDRUM,
Attorney for Defendant.

Address: Union Station Building, Lexington, Kentucky.

This request for admission served upon Kit C. Elswick, Assistant U. S. Attorney by delivering a copy of same to him in his office at Lexington, Kentucky, this April 29th, 1947.

(S) C. S. LANDRUM.

10 In United States District Court

Order

Entered April 29, 1947

Came the defendant, by counsel, C. E. Rice, Jr. and C. S. Landrum, and offered for filing Answer herein and the Court being advised,

It is ordered that the Answer be filed and noted of record.

(S) H. CHURCH FORD,
Judge, U. S. District Court.

In United States District Court

Answer

Filed April 29, 1947

FIRST DEFENSE

Defendant admits the allegations stated in paragraphs 1, 2, 3, 5, 6, 7, and 10 of the complaint; denies the allegations stated in paragraphs 9 and 11 of the complaint; admits the allegations stated in paragraphs 4 and 8 of the complaint except that it denies that plaintiff was transferred to Loyall yards or that giving up his seniority rights at Louisville in 1943 was conditioned on any transfer from Louisville to Loyall, and says that plaintiff was employed as a machinist at Loyall on July 6th, 1943, and that his seniority as machinist at Loyall dates from July 6th, 1943, the day he started to work at that point; denies that plaintiff was or is, entitled to seniority at Corbin, Ky., from July 1st, 1945, or from any other date than July 18th, 1946; and denies that had plaintiff remained in the employment of defendant during the period of his services in the Armed Forces, he would have been given seniority at Corbin, Ky., as of July 1st, 1945.

SECOND DEFENSE

Defendant says that when plaintiff entered the Armed Services it had in its employment 11 machinists at Loyall, Ky., and that plaintiff was the youngest or junior to all other machinists employed at that point; that his seniority as machinist at that point dated from July 6th, 1943; that during the period that plaintiff was in the Armed Forces, the work of defendant at Loyall decreased and by reason thereof on July 1st, 1945, three machinists senior to plaintiff were laid off; that the men so laid off were Glenn B. Wolfe with seniority from May 13th, 1929; Robert S. Kallem with seniority from October 4th, 1926, and Pearl M. Shell with seniority from August 19th, 1926; that after making said reduction in its forces at Loyall on July 1st, 1945, there remained only seven machinists working at Loyall, the junior machinist retained at that point started working as machinist at that point on June 27th, 1926; that said seven machinists could well do all of the work of the defendant at Loyall after July 1st, 1945; that when plaintiff returned from the Armed Forces he was, by defendant, given his same position on the seniority list at Loyall, which was, and is, junior to the said three machinists laid off on July 1st, 1945; that during the time plaintiff was in the Armed Services defendant's circumstances so changed as to make it impossible and unreasonable for it to give plaintiff

actual work as machinist at Loyall shops and that because of said changed circumstances it could not give to plaintiff actual work at Loyall without misplacing or laying off a machinist senior to plaintiff.

THIRD DEFENSE

Defendant states that the International Association of Machinists operating through System Federation No. 91, Railway Employees' Department American Federation of Labor is the duly authorized and designated bargaining agent or representative of the machinists employed by it; that defendant on September 1st, 1943, entered into an agreement with its machinists represented by said bargaining agent and said agreement provides, among other things, that the seniority of the machinists employed by it shall be confined to the point employed and that said seniority shall begin from the date and time the employee starts to work at the point employed; that said agreement further provides that when forces are reduced, if men are needed at other points,

12 the men cut off by said reduction of force will be given preference to transfer to some other points if men are needed at such other points, with the privilege of returning to home station when force is increased at such home point; that when plaintiff returned from the Armed Forces and because of the changed conditions and circumstances work could not be furnished him at Loyall, he applied for work at Corbin and started his work as machinist at that point on July 18th, 1946, and that in accordance with said agreement he was given seniority as machinist at Corbin from July 18th, 1946, and now holds that seniority as well as seniority from July 6th, 1943, as machinist at Loyall.

Wherefore, defendant demands that plaintiff's complaint be dismissed.

(S) C. S. LANDRUM,

(S) C. E. RICE JR.,

Attorneys for Defendant,

Address: Union Station Building, Lexington, Kentucky.

This answer served on Kit C. Elswick, Asst. U. S. Atty. by delivering a copy of same to him at his office at Lexington, Kentucky. This the 29th day of April, 1947.

(S) C. S. LANDRUM.

In United States District Court

Order

Filed May 9, 1947

Comes Kit C. Elswick, Assistant United States Attorney, and tenders and offers for filing a Response to the request of the defendant for admission under Rule 36 of the Rules of Civil Procedure, and the same is Ordered filed and noted of record.

(S) H. CHURCH FORD, Judge.

13 In United States District Court

*Response to request of Defendant for admission
under Rule 36*

Filed May 9, 1947

Comes the plaintiff, John Walter Oakley, Jr., by Claude P. Stephens, United States Attorney for the Eastern District of Kentucky, and Kit C. Elswick, Assistant United States Attorney, and for response to defendant's request for admissions under Rule 36 of the Rules of Civil Procedure states as follows:

1. Admits this statement to be true.
2. Does not have sufficient information as to whether this statement is true or false, and therefore denies same.
3. Does not have sufficient information as to whether this statement is true or false, and therefore denies same.
4. Does not have sufficient information as to whether this statement is true or false, and therefore denies same.
5. Does not have sufficient information as to whether this statement is true or false, and therefore denies same.
6. Admits this statement to be true.
7. Does not have sufficient information as to whether this statement is true or false, and therefore denies same.
8. Admits this statement to be true.
9. Admits this statement to be true.
10. Admits this statement to be true.
11. Admits this statement to be true.
12. Admits this statement to be true.
13. Admits this statement to be true.
14. Does not have sufficient information as to whether this statement is true or false, and therefore denies same.
15. Admits this statement to be true.
16. Admits this statement to be true.
17. Admits this statement to be true.
18. Admits this statement to be true.

19. Admits this statement to be true.
20. Admits this statement to be true.
21. Admits this statement to be true.
22. Admits this statement to be true.
14 23. Admits this statement to be true.
24. Admits this statement to be true.

Respectfully submitted.

(S) JOHN WALTER OAKLEY, Jr.,
By CLAUDE P. STEPHENS,
United States Attorney.

And KIT C. ELSWICK,
Assistant U. S. Attorney.

The affiant, John Walter Oakley, Jr., states that he had read the above response to request of defendant, and the same is true.

(S) JOHN WALTER OAKLEY, Jr.

Subscribed and sworn to before me by John Walter Oakley, Jr., this the 8 day of May 1947.

[SEAL]

(S) WILLIAM T. TIPTON,
*Notary Public, Whitley County,
Residing at Corbin, Kentucky.*

My Commission expires January 28, 1948.

In United States District Court

Order

Entered May 12, 1947

By agreement of counsel for the plaintiff and defendant, the above styled case is continued for further orders of the Court.

(S) H. CHURCH FORD,
Judge, U. S. District Court.

15 In United States District Court

Order

Entered May 16, 1947

Came the defendant, by counsel, C. S. Landrum, and offered for filing, Motion for Summary Judgment, and Affidavit of H. Feather, Brief for Defendant on Motion for Summary Judgment, and the Court being advised,

It is ordered that the Motion, Affidavit and Brief be filed and noted of record.

(S) H. CHURCH FORD,
Judge, U. S. District Court.

In United States District Court

Motion for summary judgment

Filed May 16, 1947

Defendant, Louisville & Nashville Railroad Company, moves the court for a summary judgment in its favor because the pleadings, the admissions on file, together with the affidavit of H. Feather, filed herewith in support of this motion, show that there is no genuine issue as to any material fact necessary for a decision in this case.

(S) C. S. LANDRUM,
Attorney for Defendant,

Address: Union Station Building, Lexington, Ky.

Copy of this motion with copy of affidavit of H. Feather referred to in this motion delivered to Kit C. Elswick, this the 16th day of May 1947.

(S) C. S. LANDRUM.

16

In United States District Court

Affidavit of H. Feather

Filed May 16, 1947

Affiant, H. Feather, states that he is a resident of Corbin, Kentucky; that he is Master Mechanic for the Louisville & Nashville Railroad Company and in charge of the said Company's mechanical work and employees at Corbin, Kentucky, at Loyall, Kentucky, and at several other points on said Company's railroad line.

Affiant says that Glen B. Wolfe has seniority as a machinist at Loyall, Kentucky, from May 13, 1929; and that said Wolfe started working as a machinist at Loyall, Kentucky, for this defendant on May 13, 1929; that Robert S. Kallem has seniority as a machinist at Loyall, Kentucky, from October 4, 1926, and that said Kallem started working as a machinist at Loyall, Kentucky, for this defendant on October 4, 1926; that Pearl M. Shell has seniority as a machinist at Loyall, Kentucky, from August 19, 1926, and that said Shell started working as a machinist at Loyall, Kentucky, for this defendant on August 19, 1926; that Elijah J. Saylor has seniority as a machinist at Loyall, Kentucky, from June 27, 1926, and that said Saylor started working as a machinist at Loyall, Kentucky, for this defendant on June 27, 1926; that this affiant is informed that the plaintiff, John Walter Oakley, Jr., was discharged from the Armed Forces on

May 22, 1946; that during the time the said John Walter Oakley, Jr., was in the Armed Service he retained his position on the seniority list of machinists at Loyall, Kentucky, and that upon his discharge from the Armed Forces, his seniority as a machinist at Loyall, Kentucky, was the same as it was before he entered the Armed Service and that said seniority at Loyall, Kentucky, dates from July 6, 1943.

(S) H. FEATHER.

Subscribed and sworn to before me by H. Feather this the 12th day of May 1947.

(S) CHAS. DENHAM,

Notary Public, Whitley County, Kentucky.

Com. expires 4-19-1951.

17

In United States District Court

Order

Entered May 21, 1947

This day came System Federation No. 91 of the Railway Employees Department of the American Federation of Labor and tendered its motion for leave to intervene in this action and answer of intervener, and, the court being advised, it is ordered that the said motion be and the same is hereby sustained, and that the said System Federation No. 91 of the Railway Employees Department of the American Federation of Labor be permitted to intervene herein as party defendant, and that the answer of the said System Federation No. 91 be filed and noted of record.

(S) H. CHURCH FORD, *Judge.*

This order should be entered:

(S) ~~KIT C. ELSWICK,~~

Attorney for Plaintiff,

(S) C. S. LANDRUM,

Attorney for Defendant,

(S) STOLL, MUIR, TOWNSEND, PARK & MOHNEY,

Attorneys for Intervening Petitioner.

In United States District Court

Motion of System Federation No. 91 of the Railway Employees' Department of the American Federation of Labor for leave to intervene

Filed May 21, 1947

Now comes System Federation No. 91 of the Railway Employees' Department of the American Federation of Labor (hereinafter referred to as System Federation), acting in its own behalf and

in behalf of all employees of the defendant Louisville and Nashville Railroad Company (hereinafter referred to as Railroad Company) belonging to the craft of machinists, and moves the Court for leave to intervene as party defendant, to file its answer to the complaint of the plaintiff (a copy of which said answer is tendered to the Court herewith), and to participate fully
 18 in all further proceedings herein as party defendant, and in support of its said motion, represents to the Court as follows, to wit:

1. The System Federation is an unincorporated association composed of local unions chartered by and affiliated with certain national and international labor organizations including, to wit: the International Association of Machinists, the International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America, the Sheet Metal Workers International Association, and the Brotherhood Railway Carmen of America, members of which said local unions are employees of the defendant Railroad Company and members of the crafts of employees known as machinists, boilermakers, sheet metal workers, and carmen, respectively. The said System Federation is the duly and legally selected representative through which said employees bargain collectively with the defendant Railroad Company. Since April 1, 1938, there have been in effect collective bargaining agreements between the System Federation and the Railroad Company, governing the terms and conditions of employment of the said employees and guaranteeing to them certain rights, seniority rights among others, and such an agreement is in effect at the present time.

The plaintiff in this action is seeking a judgment of this Court to the effect that since his discharge from the armed forces of the United States and his re-entry into the service of the defendant Railroad Company he has not been accorded the seniority status to which he was allegedly entitled after such discharge from the armed forces, and that he should be given such status. In the decision of the issues so presented, the Court will or may be called upon to interpret the collective bargaining agreements before mentioned. Any such interpretation so issued by this Court is a
 matter of direct and vital concern to the System Federation.

19 2. The said System Federation has a further interest in the issues raised by this case by virtue of its position as collective bargaining representative of all members of the craft of machinists in the employ of the defendant Railroad Company. As such representative it is under moral and legal obligation to represent in good faith the interests of all said employees in all matters concerning the interpretation and application of its collective bargaining agreement with the defendant and to act in all circumstances to effectuate the bona fide contention of said em-

ployees as to the true meaning and intent of the said agreement. This motion is filed by the said System Federation in its own behalf and as collective bargaining representative as aforesaid in behalf of all members of the craft of machinists interested in the outcome of this action.

3. The applicant System Federation and the employees of defendant Railroad Company whom it represents will or may be bound by any judgment entered by the Court in this proceeding, and valuable rights of the employees whose interests are represented herein by the System Federation will or may be finally determined herein without any opportunity being given to them to be heard unless this motion is granted and the applicant is permitted to intervene in this case.

4. The interest of the defendant Railroad Company in the seniority rosters of its machinists extends only to the point that it desires to know certainly the order in which such employees are to be furloughed or restored to service in case of fluctuating in its requirements for employees of this type. The relative standing of any individual employee on such rosters is a matter of no financial interest to the defendant. In consequence, the interests of the employees represented by the applicant herein will or may be inadequately represented by any defense made by the defendant Railroad Company.

20 5. The defense proposed to be made by this applicant as evidenced by its proposed answer tendered herewith presents issues of law and fact in common with those of the original action.

Wherefore, in behalf of itself, and in behalf of the employees whose interests it represents, the applicant respectfully moves that the Court grant it leave to intervene in this proceeding, to file an answer herein, and to take such part in the further proceedings of this case as may be necessary and appropriate to protect its interests and the interests of those whom it represents.

(s) JAMES PARK,

602 Bank of Commerce Bldg., Lexington, Kentucky,

(s) RICHARD R. LYMAN,

741 Nicholas Building, Toledo, Ohio,

Attorneys for Applicant.

Of Counsel:

STOLL, MUIR, TOWNSEND, PARK & MOHNEY,

*602 Bank of Commerce Building,
Lexington, Kentucky,*

MULHOLLAND, ROBIE & McEWEN,

741 Nicholas Building, Toledo, Ohio.

Receipt is hereby acknowledged of a copy of the above motion, accompanied by a copy of an answer, proposed to be filed by the intervener, and further service of said motion and answer upon us is hereby waived.

May 19, 1947.

(S) KIT C. ELSWICK,
Attorney for Plaintiff.

(S) C. S. LANDRUM,
Attorney for Defendant.

21

In United States District Court

Answer of Intervener

Filed May 21, 1947

Now comes System Federation No. 91 of the Railway Employees' Department of the American Federation of Labor (hereinafter referred to as System Federation) and for answer to the complaint of the plaintiff herein says:

1. The allegations contained in Paragraph 1 of the complaint constitute conclusions of law and require no answer.

2. The allegations contained in Paragraph 2 of the complaint are admitted.

3. The allegations contained in Paragraph 3 of the complaint are admitted.

4. With respect to the allegations contained in Paragraph 4 of the complaint, it is admitted that beginning on or about July 1, 1938, until May 7, 1944, plaintiff was employed by the defendant, starting as apprentice at Louisville, Kentucky, and being promoted to machinist in 1941 at Louisville; and that in 1943 plaintiff left his position in the employ of defendant at Louisville, thereby surrendering any seniority or other rights which he may have had in and to such position at Louisville, and entered the employ of defendant in the position of machinist at Loyall, Kentucky, in which position he was employed at the time he entered the Armed Forces of the United States. Further answering said Paragraph 4, intervenor denies that plaintiff was transferred from Louisville to Loyall, and alleges that plaintiff voluntarily left his position at Louisville to take employment at Loyall.

Intervenor denies each and every allegation of said Paragraph 4 not herein expressly admitted to be true.

5. The allegations contained in Paragraph 5 of the complaint are admitted.

22 6. The allegations contained in Paragraph 6 of the complaint are admitted.

7. The allegations contained in Paragraph 7 of the complaint are admitted.

8. With respect to the allegations contained in Paragraph 8 of the complaint, it is admitted that plaintiff was reemployed by defendant on July 17, 1946, as a machinist at the rate of pay of \$1.22½ per hour; that this rate of pay reflected a wage increase of \$0.16½ per hour which had been given to all employees occupying positions equivalent to plaintiff's regardless of seniority; and that plaintiff was accorded seniority in the position in which he was reemployed as of July 17, 1946.

Intervener denies each and every allegation of said Paragraph 8 not herein expressly admitted to be true.

Further answering said Paragraph 8, intervenor alleges that the position in which plaintiff was reemployed after his discharge from the Armed Forces, and to which reference is made in said Paragraph 8, was a position in the employ of defendant at Corbin, Kentucky; that plaintiff has been and still is accorded seniority as a machinist at Loyall, Kentucky, as of July 6, 1943, the date of his original employment at Loyall, with the privilege of returning to his former position at Loyall whenever, by operation of the seniority system in effect and which was in effect at the time plaintiff entered the Armed Forces, there is work available for him at Loyall.

9. The allegations contained in Paragraph 9 of the complaint are denied.

10. The allegations contained in Paragraph 10 of the complaint are admitted.

23 11. The allegations contained in Paragraph 11 of the complaint are denied.

All other allegations of the complaint not herein expressly admitted or denied are denied by this intervenor.

Wherefore, having fully answered the complaint of the plaintiff, intervenor prays that the same be dismissed and that it may have its costs and all other proper relief.

(S) JAMES PARK,

602 Bank of Commerce Building, Lexington, Kentucky,

(S) RICHARD R. LYMAN,

741 Nicholas Building, Toledo, Ohio.

Of Counsel:

STOLL, MUIR, TOWNSEND, PARK & MOHNEY,

602 Bank of Commerce Building, Lexington, Kentucky,

MULHOLLAND, ROBIE & McEWEN,

741 Nicholas Building, Toledo, Ohio.

In United States District Court

Order

Entered September 2, 1947

This case is assigned for argument at 10 A. M., on Wednesday, September 10, 1947, in the Federal Court Room in Lexington, Ky., upon the question whether, under the opinion of the Supreme Court in *The Trailmobile Company, et al., v. Whirls* (No. 85, April 14, 1947), the cause has been rendered moot by the expiration of the statutory year to which Section 8(c) of the Selective Training and Service Act limited plaintiff's right to any special or preferential standing in respect to restored seniority.

(S) H. CHURCH FORD, Judge.

24

In United States District Court

Order sustaining motion to dismiss, etc.

Entered September 12, 1947

This cause coming on to be heard on the motion of the intervening defendants to dismiss the cause on the ground that the question presented has become moot, because more than one year has elapsed since the date of the plaintiff's restoration to employment with the defendant, L. & N. Railroad Company, and the Court being advised, it is ordered and adjudged that said motion be, and the same is hereby, sustained, and this action is now dismissed as moot, without cost to either the plaintiff, or the defendant, or the intervening defendants.

(S) H. CHURCH FORD, Judge.

In United States District Court

Motion to dismiss

Filed September 12, 1947

Come the intervening defendants and move the Court to dismiss this cause on the ground that the questions involved therein have become moot, because more than one year has elapsed since the date of the plaintiff's restoration to his employment with the defendant, Louisville and Nashville Railroad Company.

(S) WILLARD H. McEWEN,

Suite 741 Nicholas Building, Toledo, Ohio,

STOLL, TOWNSEND, PARK, MOHNEY & DAVIS,

602 Bank of Commerce Building, Lexington, Kentucky,

By (S) JOHN L. DAVIS,

Attorneys for Intervening Defendants.

25

In United States District Court

Order filing notice of appeal and designation of record

Entered December 3, 1947

Comes Claude P. Stephens, United States Attorney for the Eastern District of Kentucky, and offers for filing Notice of Appeal and Designation of Record on appeal to the Circuit Court of Appeals for the Sixth Circuit.

It is Ordered that said Notice of Appeal and Designation of Record be and the same are now filed and noted of record.

(S) H. CHURCH FORD, Judge.

Certified:

[SEAL, U. S. D. C., E. D. KY.]

A. B. ROUSE, Clerk,

By H. W. PENNINGTON, D. C.

In United States District Court

Notice of appeal to Circuit Court of Appeals for Sixth Circuit

Filed December 3, 1947

Notice is hereby given that John Walter Oakley, Jr., plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Sixth Circuit, from the order of the District Court for the Eastern District of Kentucky, entered September 12, 1947, dismissing this action.

(S) CLAUDE P. STEPHENS,

United States Attorney, Eastern District of Kentucky,

Attorney for Plaintiff.

Certified:

[SEAL, U. S. D. C., E. D. KY.]

A. B. ROUSE, Clerk,

By H. W. PENNINGTON, D. C.

26

In United States District Court

Designation of contents of record on appeal

Filed December 3, 1947

Comes Claude P. Stephens, United States Attorney for the Eastern District of Kentucky, attorney for the appellant, and designates the entire record in this proceeding to be contained in the record on appeal.

(S) CLAUDE P. STEPHENS,

United States Attorney, Eastern District of Kentucky,

Attorney for Appellant.

Certified:

[SEAL, U. S. D. C., E. D. KY.]

A. B. ROUSE, Clerk,

By H. W. PENNINGTON, D. C.

In United States District Court

Order extending period for filing record on appeal

Entered December 3, 1947

Upon motion of Claude P. Stephens, United States Attorney for the Eastern District of Kentucky, and attorney for the appellant, the Court being fully advised,

It is Ordered that the time for filing the record herein on appeal be and it is hereby extended to ninety (90) days from the date of the filing of the Notice of Appeal.

(S) H. CHURCH FORD, *Judge.*

Certified:

[SEAL, U. S. D. C., E. D. KY.]

A. B. ROUSE, *Clerk,*

By H. W. PENNINGTON, *D. C.*

27

In United States District Court

Motion for order extending time for filing the record on appeal

Filed December 3, 1947

Comes Claude P. Stephens, United States Attorney for the Eastern District of Kentucky, attorney for the appellant, and moves the Court for an order extending the period for filing and docketing the record herein on appeal to the Circuit Court of Appeals for the Sixth Circuit to ninety (90) days from the date of filing the Notice of Appeal, to wit: March 2, 1948.

CLAUDE P. STEPHENS,

*United States Attorney, Eastern District of Kentucky,
Attorney for Appellant.*

Certified:

[SEAL, U. S. D. C., E. D. KY.]

A. B. ROUSE, *Clerk,*

By H. W. PENNINGTON, *D. C.*

[Clerk's Certificate to foregoing transcript omitted in printing.]

28

In the United States Court of Appeals for the Sixth Circuit

Cause argued and submitted

October 15, 1948

Before: HICKS, Chief Judge, ALLEN, and McALLISTER, Circuit Judges

This cause is argued by Claude P. Stephens for appellant and by C. S. Landrum and Willard H. McEwen for appellee and is submitted to the court.

In United States Court of Appeals

Appeal from the District Court of the United States for the
Eastern District of Kentucky

JUDGMENT

Entered November 22, 1948

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Kentucky, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the Judgment of the said District Court in this cause be and the same is hereby affirmed.

30 In United States Court of Appeals for the Sixth
Circuit

No. 10648

[File endorsement omitted.]

JOHN WALTER OAKLEY, JR., APPELLANT

v.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, APPELLEE

Appeal from the District Court of the United States for the
Eastern District of Kentucky

Before HICKS, Chief Judge, and ALLEN and McALLISTER, Circuit
Judges

Opinion

Filed Nov. 22, 1948

McALLISTER, Circuit Judge. Appellant commenced working for the Louisville and Nashville Railroad Company as an apprentice machinist at Louisville, Kentucky, on July 1, 1938, and in 1941, was promoted to the position of machinist at the same place. In 1943, he gave up his seniority rights in that place in order to be transferred to the yards of the railroad company at Loyall, Kentucky, as a locomotive machinist. On July 6, 1943, he began work in that capacity at Loyall and established seniority there as of that date. He continued in such employment until May 7, 1944, when he was inducted into the armed forces of the United States. Thereafter, he served in the army until May 22, 1946, when he was honorably discharged. While he was serving in

the army, the amount of machinist work had so decreased at Loyall that the railroad company, on July 1, 1945, reduced its force at that point. At that time, the machinists in the employ of the railroad company at Loyall were given the right to transfer to the shops at Corbin, Kentucky, and were given seniority at the latter place as of the date of their transfer.

31 Appellant, on June 1, 1946, within ninety days after his discharge from the army, applied for re-employment in the position which he occupied with the company at the time he was inducted into the armed services and asked for the seniority status and pay that he would have had if he had continued in the employ of the company in lieu of his service in the army. After appellant had made this application, he was re-employed as locomotive machinist at Corbin, Kentucky, on July 17, 1946, and was given seniority at that place as of that date. He thereafter filed his complaint against the company in the district court, claiming that under the Selective Service Act of 1940, he was entitled to seniority as of July 1, 1945, the date on which the other employees of the company at Loyall transferred to the shops at Corbin, to which point he states he would have transferred if he had not been in the armed services.

By order of the district court, System Federation No. 21 of the Railway Employees Department of the American Federation of Labor was granted leave to intervene, and thereupon moved to dismiss appellant's complaint on the ground that under Section 8 (c) of the Selective Training and Service Act of 1940, 54 Stat. 885, 50 U. S. C. App., Section 308 (c), a veteran's right to restoration to employment without loss of seniority is terminated one year after such restoration; and that more than one year had elapsed since appellant had been restored to employment with the railroad company.

The district court dismissed appellant's petition on the ground that the statute in question controlled and that under its terms, appellant was not entitled to the relief claimed.

Section 8 (c) of the Selective Training and Service Act of 1940 provides:

"Any person who is restored to a position in accordance with the provisions of paragraph (A) or (B) of subsection (b) shall be considered as having been on furlough or leave of absence during his period of training and service in the land or naval forces, shall be so restored without loss of seniority, shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person was inducted into such forces, and shall not be

discharged from such position without cause within one year after such restoration."

32 In *Trailmobile Co. et al. v. Whirls*, 154 F. 2d 866, this court had occasion to consider the above section of the statute and held that: "the last provision in paragraph (c), that the veteran 'shall not be discharged from such position without cause within one year after such restoration,' is a separate, distinct and independent benefit and should not be construed as limiting to one year the restoration of the veteran to his former position without loss of seniority. While he may not be discharged without cause within one year, if he is not so discharged he retains his seniority status as long as the Selective Training and Service Act in its present phraseology remains in effect." (Emphasis supplied.) The holding of this court in the foregoing case was, however, reversed by the Supreme Court in *Trailmobile Co. et al. v. Whirls*, 331 U. S. 40, in which it was held that the statutory protection afforded by Section 308 (c) which gave the re-employed veteran a preferred standing over employees not veterans having identical seniority rights as of the time of his restoration to employment, was terminated one year after his restoration to service.

Appellant bases his right to the seniority claimed squarely upon the terms of the statute. He was entitled to restoration to employment without loss of seniority for one year after he was taken back into the employ of the company. That period, however, having had elapsed after his restoration to employment, he was not entitled, under the provisions of the law, to the preferred seniority standing which he claimed.

The judgment of the district court dismissing appellant's complaint is, accordingly, affirmed.

33 [Clerk's Certificate to foregoing transcript omitted in printing.]

34 Supreme Court of the United States

Order allowing certiorari

Filed April 4, 1949

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 29

JOHN S. HAYNES, PETITIONER

vs.

CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC
RAILWAY COMPANY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

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1 In District Court of the United States for the Eastern
District of Kentucky, at London

No. 358

JOHN S. HAYNES, LURETHA, PULASKI COUNTY, KENTUCKY,
PLAINTIFF

v.

SOUTHERN RAILWAY SYSTEM, FERGUSON SHOPS, SOMERSET,
KENTUCKY, DEFENDANT

Complaint

2 Filed February 14, 1947

Plaintiff, John S. Haynes, alleges that:

1. This is a complaint under Section 8, Sub-Section (e), Selective Training and Service Act of 1940 (54 Stat. 890) 50 U. S. Code App., Section 308(e), as amended, (56 Stat. 724), and the jurisdiction of this Court is based on that section.

2. Plaintiff is a resident of the Eastern District of Kentucky, and resides at Luretha, Pulaski County, Kentucky.

3. The defendant is a corporation duly organized under the State of Virginia, and doing business in the Eastern District of Kentucky, carrying on the business of railroading.

4. Beginning on or about July 6, 1940, until February 1, 1942, plaintiff was employed by the defendant at Ferguson Shops, Somerset, Pulaski County, Kentucky, as a machinist helper.

5. Plaintiff was paid wages or salary for said employment by said defendant company during such period of employment at the rate of 72c per hour.

6. Plaintiff continued to work for and occupy said position in the employment of the defendant until February 1, 1942, at which time plaintiff enlisted in the Armed Forces of the United States and thereupon entered the military training and service of said Armed Forces. Plaintiff was registered with Selective Service Board of Registration, Local Board No. 142, Somerset, Kentucky, and his Order Number was 10228-A.

2 7. Plaintiff was honorably discharged from the Armed Forces of the United States on October 31, 1945, and on November 16, 1945, within ninety days after his discharge, applied to the defendant for reemployment in the position and employment he occupied with the defendant at the time of his enlistment in the Armed Forces, with like seniority and pay that he would have had, had he continued in the employment of the defendant and had not served in the Armed Forces of the United States for the time mentioned in the above paragraph.

8. Upon plaintiff's application for reemployment he was immediately reemployed on November 16, 1945 as machinist helper at the rate of 80c per hour, which was the same employment that he had at the time of his entry into the Armed Forces of the United States, and the increase given of 8c per hour was the increase given to machinist helpers irregardless of seniority; that said employment of machinist helper was not the employment to which he was entitled had he been given the seniority that he would have had, had he remained in the employment of the company during the period of his service in the Armed Forces.

9. Plaintiff states that during his service in the Armed Forces the defendant company promoted six helper machinists to helper apprentices, and that these six men were junior in seniority to himself, and that had he not entered the Armed Forces as above mentioned he would have been promoted to helper apprentice and would have been given the pay as such, and such promotion would have been in December 1942 or not later than February 1, 1943; that as such helper apprentice he would have been given one and one-half ($1\frac{1}{2}$ c) cent increase in wages over and above that which was given the machinist helpers, and would have received a like raise every six months thereafter.

10. Plaintiff states that he is qualified to perform the duties of helper apprentice, and also physically able to perform said duties.

3 11. Plaintiff now alleges that he is entitled to be restored to the seniority that he would have had, had he not served in the Armed Forces of the United States for the time above mentioned, and that he was entitled to reemployment as helper apprentice on November 16, 1945, and entitled to the pay increase which helper apprentices have received since February 1, 1943, and that he would have been promoted to such helper apprentice had he not been in the Armed Forces of the United States.

Wherefore, plaintiff respectfully prays:

(a) That this Court adjudge and decree that the plaintiff is entitled to be restored to the seniority status which he would have had in his employment with the defendant company had he not served with the Armed Forces for the period of time mentioned herein;

(b) That this Court adjudge and decree that this plaintiff was entitled to be reemployed with the company as apprentice helper on December 16, 1945 and entitled to all pay increases given helper apprentices since February 1, 1943;

(c) That plaintiff recover of the defendant the increase in wages which he would have been entitled to receive had he upon his reemployment with the defendant company, on December 16, 1945,

been employed as helper apprentice with pay increases from February 1, 1943;

(d) That the plaintiff have such other and further relief as may be just and proper in the premises, including costs.

(S) KIT C. ELSWICK,
Assistant United States Attorney.

The affiant, Kit C. Elswick, Assistant United States Attorney for the Eastern District of Kentucky, says that the statements contained in the foregoing Petition are true, as he verily believes.

(S) KIT C. ELSWICK.

Subscribed and sworn to before me by Kit C. Elswick, this 14th day of February 1947.

(S) A. B. ROUSE,
Clerk, U. S. Dist. Court.

4 In United States District Court

Summons

Filed February 18, 1947

To the above named Defendant:

You are hereby summoned and required to serve upon Kit C. Elswick, Assistant U. S. Attorney, Post Office Bldg., Lexington, Ky. Plaintiff's Attorney, whose address, Lexington, Ky. an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

[SEAL]

(S) A. B. ROUSE, *Clerk.*

Date Feb. 14, 1947.

Return on service of writ

I hereby certify and return, that on the 14th day of Feb., 1947, I received the within summons with complaint attached, and on the same day I served it on the Southern Railway System by delivering a true copy with complaint attached to A. H. Judd, Asst. Baggage Agent, highest ranking officer available, at Lexington, Ky.

JOHN M. MOORE,
U. S. Marshal.

By (S) CHAS. H. DUDLEY,
Deputy.

In United States District Court

Order

Entered March 3, 1947

The time for defendant to file answer herein is hereby ordered extended for sixty days, namely, until May 5, 1947.

(S) H. CHURCH FORD,
*Judge, U. S. District Court,
Eastern District of Kentucky.*

This order is agreed to:

(S) KIT C. ELSWICK,
Asst. U. S. Atty.
(S) BRADLEY & BRADLEY,
Attorneys for Defendant.

5 In United States District Court

[Title omitted.]

Order

Entered May 6, 1947

This day came Bradley & Bradley, attorneys for the defendant in the above styled case, and tendered and offered for filing Certificate and Answer herein. The Court being advised it is Ordered that this certificate and Answer be filed and noted of record.

(S) H. CHURCH FORD, *Judge.*

6 In United States District Court

[Title omitted.]

Certificate

Filed May 6, 1947.

The undersigned hereby certify that they have this day sent, by registered mail, to the Federal Asst. District Attorney for the Eastern District of Kentucky, at Lexington, a copy of the attached answer.

This 2 May 1947.

[SEAL]

(S) BRADLEY & BRADLEY,
Attorneys for Defendant,

By (S) J. C. BRADLEY.

Subscribed and sworn to before me by J. Craig Bradley, Jr., this 2 May 1947.

(S) DOROTHY EISON,
Notary Public, Scott Co., Ky.

My com. expires 9/6/47.

7 In United States District Court

[Title omitted.]

Answer

Filed May 6, 1947

Comes now the defendant, Cincinnati, New Orleans & Texas Pacific Railway Company, and for its answer to plaintiff's complaint, denies each and every affirmative allegation of said complaint, except so far as is specifically admitted as is hereinafter set out, to-wit:

That plaintiff is a resident of the eastern district of Kentucky and resides at Luretha, Pulaski County, Kentucky.

That defendant is a corporation duly organized under the State of Ohio and doing business in the eastern district of Kentucky, carrying on the business of railroading.

That on or about December 10, 1940, and until February 1, 1942, plaintiff was employed by defendant in Ferguson Shops, Pulaski County, Kentucky, as machinist helper.

That plaintiff was paid wages or salary for said employment by said defendant company during such period of employment at the rate of seventy-two (72c) cents per hour.

That plaintiff continued to work for and occupy said position of employment with the defendant until Feb. 1, 1942, at which time plaintiff enlisted in the armed forces of the United States and thereupon entered the military training and service of said armed forces. Plaintiff was registered with Selective Board of Registration, Local Board 142, Somerset, Ky., and his order number was 10228A.

8 That plaintiff was honorably discharged from the armed forces of the United States on Oct. 31, 1945, and in November, 1945, within ninety days after his discharge, applied to this defendant for reemployment in the position and employment he occupied with the defendant at the time of his enlistment in the armed forces, with like seniority.

That upon plaintiff's application for reemployment he was immediately reemployed on November 16, 1945, as machinist helper at the rate of eighty (80c) cents per hour, which was the same employment that plaintiff had at the time of his entry in the armed forces of the United States and the increase given of eight (8c) cents per hour was the increase given to machinist helpers regardless of seniority.

That during plaintiff's service in the armed forces, defendant company indentured six machinists helpers as helper apprentices

and that these six men were junior in seniority to plaintiff on the roster of machinist helpers.

II

For further answer, defendant states that from the time plaintiff first started to work for this defendant, up to and including the present time, the employer and employee relationship between plaintiff and this defendant was and is governed by and is subject to rules and regulations set forth in the collective bargaining agreement between The Cincinnati, New Orleans and Texas Pacific Railway Company and other railroad companies and the International Association of Machinists and other interested organizations effective March 1, 1926. A copy of said agreement effective March 1, 1926, as reprinted as of December 27, 1943, is attached hereto and made a part of this answer, the same as if copied herein in full.

Rule 67 reads as follows:

"67. Helper Apprentices

7 "Helpers who have had not less than two consecutive years' experience as machinist helper at the point where employed at the time application for apprenticeship is made, may become a helper apprentice.

9 When assigned as helper apprentices they must not be over thirty (30) years of age.

"Note: See memorandum of understanding dated October 9, 1940, reference to changing the words 'at the point employed' and 'in a Master Mechanic's territory' on page 111."

Rule 29 reads as follows:

"39. Apprentices

"All apprentices must be able to speak, read, and write the English language and understand at least the first four rules of Arithmetic. Applicants for regular apprenticeship shall be between sixteen (16) and twenty-one (21) years of age, and, if accepted, shall serve four years of 290 days each calendar year. If retained in the service at the expiration of their apprenticeship, they shall be paid not less than the minimum rate established for journeymen mechanics of their respective crafts.

"In selecting helper apprentices, seniority shall govern, and they shall serve three years of 290 days each calendar year. All selections to be made in conjunction with the respective crafts shop committees.

"Note—See special rules of each craft for additional apprentice rules.

"Note: See memorandum of understanding, dated December 29, 1939, reference to age of apprentices on page 106."

Rule 69 reads as follows:

"69. The number of helper apprentices must not at any time exceed 50% of the combined number of regular and helper apprentices assigned."

Defendant states that under Rule 67, it is necessary and required that before a machinist helper is eligible for selection as a helper apprentice, he must have two years actual experience as
10 machinist helper, time spent on furlough or leave of absence not being counted in said two year period.

Defendant states that under Rule 39 the accepted procedure and custom for the filling of vacancies in the classification of helper apprentice from machinist helper with two years experience is as follows:

(a) Applicant makes known his desire to be indentured to the master mechanic.

(b) When a vacancy occurs, the master mechanic calls in the helpers, who have so signified their desire for selection, for interview provided he is satisfied that the helper has shown an aptitude for the work.

(c) Consideration is given to applicant's educational qualifications.

(d) If approved preliminarily, applicant is given examinations and if grades are favorable, he is eligible for selection.

(e) The Respective Crafts Shop Committee is then consulted for recommendations and selections are made with their approval on the basis of seniority and ability.

Defendant states that at the time plaintiff went into the armed forces of the United States he had one year and two months experience as a machinist helper and that he did not have two years experience in such classification until September of 1946, that there did not exist at that time nor has there existed at any time since September 1946, any vacancies in the classification of helper apprentice. Defendant states that plaintiff did not make known to the master mechanic his desire to become a helper apprentice, that he had not been interviewed by said master mechanic or shown aptitude for the higher classification, that he has not taken his examination for said classification and that his qualifications have not been shown to or approved by the master mechanic or the Crafts Shop Committee.

Defendant states further that by established rules and custom when an employee is on "leave of absence or furlough," said employee is not entitled to any promotions or vacancies that might
11 occur while he is on said leave of absence or furlough and that said employee has no right of complaint if

said vacancy or promotion is awarded to an employee who is junior to him.

Defendant states that when plaintiff left its employment for service in the armed forces of the United States, plaintiff was employed as a machinist helper with seniority date as such of Dec. 10, 1940, that when plaintiff applied for reemployment with this defendant on Nov. 16, 1945, plaintiff was immediately re-employed as machinist helper with seniority date as such of Dec. 10, 1940, with all wage increases that occurred in this classification during plaintiff's absence; that such reemployment is restoration of plaintiff to such position as required by Section 8, Sub-Sec. (b) and (c) of the Selective Training and Service Act of 1940 (54 Stat. 890) 50 U. S. Code App., Section 308 (b) and (c) as amended (56 Stat. 724).

III

Without waiving any of its rights or defenses as set out in paragraphs I and II of its answer, defendant states that should the court decide that plaintiff is entitled to the classification of helper apprentice with a seniority in such classification above that of the date of the first junior helper selected as a helper apprentice during his absence while serving in the armed forces, which was April 16, 1943, then and in that event plaintiff's rate of pay would be the minimum helper rate for the first six months, beginning November 16, 1945, the date of plaintiff's reemployment, with an increase of two cents per hour for every six months thereafter. Rule 70 of the collective bargaining agreement referred to above and made a part of this answer reads as follows:

"70. Helper apprentices shall receive the minimum helper rate for the first six months, with an increase of 2c per hour for every six months thereafter until they have served three years."

The uniform interpretation of this rule is to the effect that the increase in pay for each six months period depends upon six month periods of actual experience and does not
12 accrue to an employee of such classification while on leave of absence or furlough.

Wherefore, having fully answered, the defendant prays that the complaint of the plaintiff be dismissed and it prays for its costs herein expended; and it further prays that in the event it is adjudged that plaintiff is entitled to the classification of machinist apprentice with seniority date as of April 16, 1943, then and in that event it prays that plaintiff's recovery be limited in accordance with the allegations contained in paragraph III of

this answer; and defendant further prays for all other proper and equitable relief.

(S) BRADLEY & BRADLEY,
Attorneys for Defendant.

In United States District Court

[Title omitted.]

Order

Entered May 12, 1947

By agreement of counsel, for the plaintiff and defendant, the above styled case is continued for further orders of the Court.

(S) H. CHURCH FORD,
Judge, U. S. District Court.

13 In United States District Court

[Title omitted.]

Order

Entered June 16, 1947

Came System Federation No. 21 of Railway Employees' Department of American Federation of Labor, and Glen E. Groves, Harold L. Newell, George Beasley, Jr., George Earl Denham, Robert S. Coleman, Marion J. Mullenix, C. L. Francis, Sammie Frei, C. A. Hall, and J. L. Green and filed their motion for leave to intervene herein, and tendered therewith their answer as intervening defendants, the filing of which motion and the tendering of said answer is hereby noted of record herein.

It is now ordered by the Court that said motion to intervene be and the same is hereby assigned for hearing in the Federal Court Room at Lexington, Kentucky, on Friday, June 27, 1947, at ten (10) o'clock a. m.

(S) H. CHURCH FORD,
Judge, U. S. District Court.

14 In United States District Court

Motion of System Federation No. 21 of Railway Employees' Department of American Federation of Labor, and Glen E. Groves, Harold L. Newell, George Beasley, Jr., George Earl Denham, Robert S. Coleman, Marion J. Mullenix, C. L. Francis, Sammie Frei, C. A. Hall, and J. L. Green for leave to intervene

Filed June 16, 1947

Now come System Federation No. 21 of the Railway Employees' Department of the American Federation of Labor (hereinafter referred to as System Federation), acting in its own behalf and in behalf of all employees of the defendant railroad company belonging to the craft of machinists, and Glen E. Groves, Harold L. Newell, George Beasley, Jr., George Earl Denham, Robert S. Coleman, Marion J. Mullenix, C. L. Francis, Sammie Frei, C. A. Hall and J. L. Green, and move the Court for leave to intervene as parties defendant herein to file their answer to the complaint of the plaintiff (a copy of which said answer is tendered to the Court herewith), and to participate fully in all further proceedings herein as parties defendant, and in support of their said motion, represent to the Court as follows, to-wit:

1. The System Federation is an unincorporated association composed of local unions chartered by and affiliated with certain national labor organizations, to-wit, the International Association of Machinists, the International Brotherhood of Blacksmiths, Drop Forgers and Helpers, the Brotherhood Railway Carmen of America, the International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America, the Sheet Metal Workers' International Association, and the International Brotherhood of Electrical Workers, members of which said local unions are the employees of the defendant Cincinnati, New Orleans and Texas Pacific Railroad Company and members of the crafts of employees known as machinists, blacksmiths, carmen, boilermakers, sheet metal workers, and electrical workers, respectively, the 15 craft of machinists including among others machinist helpers and machinist apprentices. The System Federation is the duly and legally selected representative through which the said employees bargain collectively with the defendant railroad company. Since March 1, 1926 the said System Federation has been a party to a collective bargaining agreement with the said defendant railroad company, governing the terms and conditions of employment of the said employees, establishing the method of selecting apprentices, and guaranteeing to employees certain rights, seniority rights among others.

The plaintiff in this action is seeking a judgment of this Court to the effect that prior to his induction into the armed forces of the United States, he was the holder of certain alleged seniority rights, and that since his discharge from the armed forces and his reentry into the service of defendant railroad company he has not been restored to the position to which his alleged seniority rights are said to entitle him. In the decision of the issues so presented, this Court will or may be called upon to interpret the collective bargaining contract before mentioned. Any such inter-

pretation so issued by this Court would be a matter of direct and vital concern to the System Federation.

The said System Federation has a further interest in the issues raised by this case by virtue of its position as collective bargaining representative of all members of the craft of machinists, to-wit, machinist helpers and machinist apprentices among others, in the employ of defendant railroad company. As such representative it is under moral and legal obligation to represent in good faith the interests of all said employees in all matters concerning the interpretation and application of its collective bargaining agreement with the defendant railroad company, and to act in all circumstances to effectuate the bona fide contention of said employees as to the true meaning and intent of the said agreement. This motion is filed by the said System Federation in its own behalf and as collective bargaining representative as aforesaid, in behalf of all members of the craft of machinists interested in the outcome of this action.

16 2. Glen E. Groves, Harold L. Newell, George Beasley, Jr., George Earl Denham, Robert S. Coleman, Marion J. Mullenix, C. L. Francis, Sammie Frei, C. A. Hall and J. L. Green are employees of the defendant railroad company in the capacity of machinist apprentices, and now occupy positions on the seniority roster of apprentices above that presently occupied by the plaintiff and below that which he seeks to have assigned to him in this action. If the prayer of the complaint herein is granted, these said individual applicants will suffer loss in their relative seniority positions as machinist apprentices and in their opportunities to obtain and retain active employment in such capacity, with the defendant railroad company.

3. The applicants System Federation, and Glen E. Groves, Harold L. Newell, George Beasley, Jr., George Earl Denham, Robert S. Coleman, Marion J. Mullenix, C. L. Francis, Sammie Frei, C. A. Hall, and J. L. Green will or may be bound by any judgment entered by the Court in this proceeding, and valuable rights of the individual applicants and other employees whose interests are represented herein by the System Federation will or may be finally determined herein without any opportunity being given to them to be heard unless this motion is granted and they are permitted to intervene in this case.

4. The interest of the defendant railroad company in the seniority roster of its machinist apprentices extends only to the point that it desires to know certainly the order in which such employees are to be furloughed or restored to service in case of fluctuations in its requirements for employees of this type. The relative standing of any individual employee on such rosters is a matter of no financial interest to the defendant company. In consequence the

interest of the applicants herein will or may be inadequately represented by any defense made by the defendant company.

17 5. The defense proposed to be made by these applicants as evidenced by their proposed answer tendered herewith presents issues of law and fact in common with those of the original action.

Wherefore, in behalf of themselves, and in behalf of the employees whose interests these parties represent, the moving parties respectfully move that the Court grant them leave to intervene in this proceeding, to file an answer herein, and to take such part in the further proceedings of this case as may be necessary and appropriate to protect their interests and the interests of those whom they represent.

(S) JAMES PARK,
602 Bank of Commerce Bldg.,
Lexington, Kentucky.

(S) WILLARD H. McEWEN,
741 Nicholas Building, Toledo, Ohio.

Of Counsel:

• STOLL, MUIR, TOWNSEND, PARK AND MOHNEY,
602 Bank of Commerce Building, Lexington, Kentucky.

MULHOLLAND, ROBIE & McEWEN,
741 Nicholas Building, Toledo, Ohio.

18 The motion of System Federation No. 21 of Railway Employees' Department of American Federation of Labor, etc., for leave to intervene and their answer as intervening defendants have been served upon the plaintiff, John S. Haynes and the defendant, Cincinnati, New Orleans, & Texas Pacific Railway Company by delivering or mailing a copy thereof to their respective attorneys of record herein.

This the 16th day of June 1947.

(S) WILLARD H. McEWEN,

(S) JAMES PARK,

Attorneys for System Federation No. 21 of Railway Employees' Department of American Federation of Labor, etc.

In United States District Court

[Title omitted.]

Order

Entered June 17, 1947

Pursuant to order entered herein on June 16th, 1947, this cause came on for hearing on the Motion for leave to intervene by System Federation of Labor, and Glen E. Groves, Harold L. Newell,

George Beasley, Jr., George Earl Denham, Robert S. Coleman, Marion J. Mullenix, C. L. Francis, Sammie Frei, C. A. Hall and J. L. Green, the attorneys being present and no objection being raised to the motion, it is Ordered that the motion to intervene be sustained and the answer filed.

(S) H. CHURCH FORD,
Judge, U. S. District Court.

19

In United States District Court

[Title omitted.]

Answer of System Federation No. 21 of Railway Employees' Department of American Federation of Labor, Glen E. Groves, Harold L. Newell, George Beasley, Jr., George Earl Denham, Robert S. Coleman, Marion J. Mullenix, C. L. Francis, Sammie Frei, C. A. Hall, and J. L. Green, intervening defendants

Filed June 16, 1947

Now come intervening defendants System Federation No. 21 of the Railway Employees' Department of the American Federation of Labor (hereinafter referred to as System Federation), and Glen E. Groves, Harold L. Newell, George Beasley, Jr., George Earl Denham, Robert S. Coleman, Marion J. Mullenix, C. L. Francis, Sammie Frei, C. A. Hall, and J. L. Green, and for their answer to the complaint filed herein, say that: they admit the truth of certain allegations in the complaint as follows, to-wit:

That plaintiff is a resident of the Eastern District of Kentucky and resides at Luretha, Pulaski County, Kentucky.

That defendant railroad company is a corporation duly organized under the laws of the State of Ohio and doing business in the Eastern District of Kentucky, carrying on the business of railroading.

20 That beginning on or about December 10, 1940, and until February 1, 1942, the plaintiff was employed by the defendant railroad company at Ferguson Shops, Somerset, Pulaski County, Kentucky, as a machinist helper.

That the plaintiff was paid wages or salary for said employment by said defendant railroad company during such period of employment at the rate of 72 cents per hour.

That plaintiff continued to work for and occupy said position in the employment of defendant railroad company until February 1, 1942 at which time plaintiff enlisted in the armed forces of the United States and thereupon entered the military training and service of said armed forces, and that plaintiff was registered with Selective Service Board of Registration, Local Board No. 142, Somerset, Kentucky, and his Order Number was 10228-A.

That plaintiff was honorably discharged from the armed forces of the United States on October 31, 1945, and in November, 1945, within ninety days after his discharge, applied to the defendant railroad company for reemployment in the position and employment he occupied with the defendant at the time of his enlistment in the armed forces.

That upon plaintiff's application for reemployment he was immediately reemployed by the defendant railroad company on November 16, 1945 as machinist helper at the rate of 80 cents per hour, which was the same employment that he had at the time of his entry into the armed forces of the United States and the increase of eight cents per hour was the increase given to machinist helpers regardless of seniority.

That during the plaintiff's service in the armed forces the defendant railroad company indentured six machinist helpers as machinist apprentices, and that these six men were junior to the plaintiff in seniority on the roster of machinist helpers.

Further answering, these defendants deny each and every allegation of the complaint not specifically admitted herein to be true.

21 Wherefore, having fully answered the complaint herein, these intervening defendants pray that the same be denied and dismissed at the plaintiff's cost.

(S) JAMES PARK,

602 Bank of Commerce Building, Lexington, Kentucky.

(S) WILLARD H. McEWEN,

741 Nicholas Bldg., Toledo, Ohio.

Of Counsel:

STOLL, MUIR, TOWNSEND, PARK & MOHNEY, . .

602 Bank of Commerce Building, Lexington, Kentucky,

MULHOLLAND, ROBIE & McEWEN,

741 Nicholas Building, Toledo, Ohio.

In United States District Court

Motion to dismiss complaint

Filed September 12, 1947

Come the intervening defendants and move the Court to dismiss this cause on the ground that the questions involved therein have become moot, because more than one year has elapsed since the date of the plaintiff's restoration to his employment with the

defendant, Cincinnati, New Orleans and Texas Pacific Railway Company.

(S) WILLARD H. McEWEN,
Suite 741 Nicholas Building, Toledo, Ohio,
STOLL, TOWNSEND, PARK, MOHNEY, & DAVIS,
602 Bank of Commerce Building, Lexington, Kentucky,
By (S) JOHN L. DAVIS,
Attorneys for Intervening Defendants.

22

In United States District Court

Order sustaining motion to dismiss

Entered September 12, 1947

This cause coming on to be heard on the motion of the intervening defendants to dismiss this cause on the ground that the question presented has become moot, because more than one year has elapsed since the date of the plaintiff's restoration to employment with the defendant, Cincinnati, New Orleans and Texas Pacific Railway Company, and the Court being advised, it is ordered and adjudged that said motion be, and the same is hereby, sustained, and this action is now dismissed as moot, without cost to either the plaintiff, or the defendant, or the intervening defendants.

(S) H. CHURCH FORD, *Judge.*

In United States District Court

Order filing notice of appeal and designation of record

Entered December 3, 1947

Comes Claude P. Stephens, United States Attorney for the Eastern District of Kentucky, and offers for filing Notice of Appeal and Designation of Record on appeal to the Circuit Court of Appeals for the Sixth Circuit.

It is Ordered that said Notice of Appeal and Designation of Record be and the same are now filed and noted of record.

(S) H. CHURCH FORD, *Judge.*

Certified:

[SEAL, U. S. D. C., E. D. KY.]

A. B. ROUSE, *Clerk.*

By H. W. PENNINGTON, *D. S.*

In United States District Court

Notice of appeal to Circuit Court of Appeals for Sixth Circuit

Filed December 3, 1947

Notice is hereby given that John S. Haynes, plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Sixth Circuit, from the order of the District Court for the Eastern District of Kentucky, entered September 12, 1947, dismissing this action.

(S) CLAUDE P. STEPHENS,
*United States Attorney, Eastern District of Kentucky,
Attorney for Plaintiff.*

In United States District Court

Designation of contents of record on appeal

Filed December 3, 1947

Comes Claude P. Stephens, United States Attorney for the Eastern District of Kentucky, attorney for the appellant, and designates the entire record in this proceeding to be contained in the record on appeal.

(S) CLAUDE P. STEPHENS,
*United States Attorney, Eastern District of Kentucky,
Attorney for Appellant.*

In United States District Court

Motion for order extending time for filing the record on appeal

Filed December 3, 1947

Comes Claude P. Stephens, United States Attorney for the Eastern District of Kentucky, attorney for the appellant, and moves the Court for an order extending the period for filing and docketing the record herein on appeal to the Circuit Court of Appeals for the Sixth Circuit to ninety (90) days from the date of filing the Notice of Appeal, to-wit: March 2, 1948.

(S) CLAUDE P. STEPHENS,
*United States Attorney, Eastern District of Kentucky,
Attorney for Appellant.*

In United States District Court

Order extending period for filing record on appeal

Entered December 3, 1947

Upon motion of Claude P. Stephens, United States Attorney for the Eastern District of Kentucky, and attorney for the appellant, the Court being fully advised,

It Is Ordered that the time for filing the record herein on appeal be, and it is hereby extended to ninety (90) days from the date of the filing of the Notice of Appeal.

(S) H. CHURCH FORD, Judge.

Certified:

[SEAL, U. S. D. C., E. D. KY.]

A. B. ROUSE, Clerk.

By H. W. PENNINGTON, D. C.

25 [Clerk's Certificate to foregoing transcript omitted in printing.]

26 In the United States Court of Appeals for the Sixth Circuit

Cause argued and submitted

October 15, 1948

Before HICKS, Chief Judge, ALLEN and McALLISTER,
Circuit Judges

This cause is argued by Claude P. Stephens for appellant and by C. J. Petzhold and Willard H. McEwen for appellee and is submitted to the court.

In United States Court of Appeals

Judgment

Entered November 22, 1948

The above cause coming on to be heard on the transcript of the record, briefs of the parties, and argument of counsel in open court, and the court being duly advised,

Now, therefore, it is hereby ordered that the judgment of the district court be and is hereby affirmed upon the authority of John Walter Oakley, Jr. v. Louisville and Nashville Railroad Company, — F.2d — (C. A. 6) decided this day.

18 HAYNES VS. CINCINNATI, N. O. AND TEXAS PAC. RY. CO.

27 [Clerk's Certificate to foregoing transcript omitted in
printing.]

28 Supreme Court of the United States

Order allowing certiorari

Filed April 4, 1949

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.